

REMARKS/ARGUMENTS

Applicant respectfully requests the Examiner to reconsider his rejection for the reasons set forth hereinbelow.

The Examiner has combined three references to reject independent method claim 1 which claims a method for controlling fire blight. The method of claim 1 comprises providing an acid environment comprising (1) a fungal structure and (2) at least one of disodium hydrogen phosphate and sodium hydrogen carbonate in an amount sufficient to maintain a pH of the acidic environment between 3 to 6. The method includes applying the acid environment as set forth above to a plant for controlling fire blight.

The Examiner has provided as a basic reference a document as the primary reference which teaches a composition for treating crops in an effort to eliminate white root rot disease. The basic reference is not drawn to a method for controlling fire blight but rather white root rot. In addition to not being a method for controlling fire blight, the primary reference does not suggest an acidic environment which comprises fungal structures as claimed. Not only does the primary not teach the first component of the claimed acid environment, that is, the fungal structure, the primary reference does not teach the second component of the acidic environment, that is, at least one of disodium hydrogen phosphate and sodium hydrogen carbonate. At most, the Japanese document can be said to teach an acid composition which is to be applied as a liquid to crops to eliminate white root rot.

The secondary reference to Seibold et al. suggests that the fungi may inhibit growth of fire blight. The primary reference does not deal with fire blight but rather the treatment of white root rot. Why would one skilled in the art having the primary

reference in front of them look to the cited secondary reference which deals with fire blight? The answer is clear. Applicant's disclosure. Assuming that the inventor of the primary reference were to see the secondary reference, he would not pay any attention to the teachings of the secondary reference as it does deal with his problem, that being, white root rot.

The tertiary reference deals with a method for increasing crop yield. Again, this method has nothing to do with the method of the primary reference. The inventor of the primary reference, if he were to see the tertiary reference, would pay no attention to it, as the tertiary reference does not deal with his problem. Why does the Examiner combine the tertiary reference with the other two references cited? The answer is simple, Applicant's own disclosure teaches the combination.

The Examiner in response to the arguments previously presented by Applicant never addresses the critical issues set forth above. Why would an inventor of a method for treating white root rot look to a method for treating fire blight and a method for increasing crop production teachings of controlling white root rot? Clearly, the Examiner's rejection belies the concept of the whole clause of 35 U.S.C. 103.

With regard to independent claim 15, there is nothing in the subtotal teachings of the prior art which would suggest the composition claimed in independent claim 15.

Applicant respectfully requests that the Examiner withdraw his rejection and issue a formal notice of allowance.

Absent the issuance of a formal notice of allowance, Applicant respectfully requests that the instant amendment be entered for purposes of appeal as the instant amendment merely corrects a typographical error in independent claim 1 and cancels independent claim 14 thereby reducing the issues on

appeal.

The early issuance of a notice of allowance is respectfully requested.

In light of the foregoing, it is submitted that independent claim 1 and all of the claims which depend therefrom patentably define over the cited and applied prior art references and an early indication of same is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

By /Gregory P. LaPointe #28395/
Gregory P. LaPointe
Attorney for Applicants
Reg. No.: 28,395

Telephone: 203-777-6628
Telefax: 203-865-0297

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